

CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN CC DOCKET NO. 01-92, WC DOCKET NOS. 05-337, 07-135, 10-90 AND GN DOCKET NO. 09-51 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

Before The
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109

REPLY COMMENTS OF NEUTRAL TANDEM

Neutral Tandem respectfully submits these reply comments in response to the Commission's Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking ("NPRM") released on February 9, 2011 (FCC 11-13) in the above-listed dockets.

INTRODUCTION

In its opening comments, Neutral Tandem explained that competition has developed in the market for local tandem transit service.¹ This competition has produced real benefits,

¹ As defined in the *NPRM*, Local tandem transit service involves "two carriers that are not directly interconnected exchange[ing] non-access traffic by routing the traffic through an intermediary carrier's network." *NPRM* ¶ 683.

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including lower prices, better service, and innovative products, for the telecommunications marketplace as a whole.²

Despite the record in this matter, a small number of carriers have asked the Commission to require Incumbent Local Exchange Carriers (“ILECs”) to provide local tandem transit service at cost-based, “TELRIC” rates.³ In general, these carriers complain that they lack meaningful competitive alternatives to the local tandem transit service provided by the ILECs.

These carriers’ arguments should be rejected. [REDACTED]

[REDACTED]

[REDACTED] Neutral Tandem provides local transit service on a virtually ubiquitous basis throughout the country, and it certainly provides an alternative to the ILECs’ local tandem transit service in the areas served by the carriers that are asking the Commission to regulate the ILECs’ local transit rates.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

If the Commission finds it necessary to address any legal issues surrounding local tandem transit service, it should clarify that the service is not “interconnection” under Section 251(c)(2)

² See Neutral Tandem’s Opening Comments, at 3-5.

³ See, e.g., Joint Comments of Cbeyond, Integra, and TWT, at 20-23; Comments of Charter Comms., Inc., at 8-14; Comments of Cox Communications, Inc. at 16-17; Comments of MetroPCS Comms., Inc., at 28.

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of the Telecommunications Act of 1996. Local tandem transit service unquestionably is the delivery of telecommunication traffic, and the Commission's rules make clear that "interconnection" under Section 251(c)(2) is not the delivery of telecommunications traffic. Several federal circuit courts have reached the same conclusion.

Thus, when the Commission has had occasion to address this issue in the past, it has found that ILECs are not required to provide local tandem transit service under the 1996 Act or the Commission's rules. Federal district courts, however, have reached mixed results on this issue. Although one district court correctly applied the Commission's prior approach, two other district courts, including a decision issued earlier this month, mistakenly have held that local tandem transit service is "interconnection" under Section 251(c)(2) of the Act.

Those two district courts have pointed to concerns expressed by the Commission back in its March 3, 2005 Further Notice of Proposed Rulemaking in Docket No. 01-92 ("2005 FNPRM") to justify their decisions.⁴ Whatever concerns about competitive choice in the local tandem transit market existed at the time of the 2005 FNPRM, such concerns are no longer meaningfully present in 2011. If the Commission finds it necessary to address any of the legal issues surrounding local tandem transit service, it should clarify that the service is not "interconnection" under Section 251(c)(2) of 1996 Act or the Commission's rules.

I. CARRIERS HAVE, AND USE, COMPETITIVE ALTERNATIVES TO ILEC LOCAL TANDEM TRANSIT SERVICE.

Carriers asking the Commission to regulate ILEC local transit service rates have argued that, in various markets where they operate, they lack competitive alternatives to the local

⁴ *In re Development of a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking (rel. Mar. 3, 2005) ("2005 FNPRM").

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tandem transit service provided by ILECs.⁵ Charter Communications has gone so far as to claim that “the available evidence also suggests that Neutral Tandem’s service is not ubiquitous across the country and is not available in many Tier 2 and Tier 3 markets.”⁶

With due respect, these comments are not supported by the facts. Neutral Tandem provides local tandem transit service in 189 of the 192 LATAs in the continental United States.⁷ The only LATAs in the continental United States in which Neutral does not provide local tandem transit service are LATAs 921, 980, and 981.⁸

LATA 921 is comprised entirely of Fishers Island, New York, which is located off of the end of Long Island Sound and has approximately 250 full-time residents.⁹ LATAs 980 and 981 are comprised of parts (but not all) of the Navajo Nation.¹⁰ As of 2000, fewer than 175,000 persons resided on the entire Navajo Nation, including substantial areas that are not within LATAs 980 and 981.¹¹ The suggestion that Neutral Tandem is not present in “many Tier 2 or Tier 3 markets” is belied by the facts.

More specifically, Neutral Tandem provides local tandem transit service in every one of the markets served by the carriers claiming that they lack competitive alternatives to the ILECs’ local tandem transit service.¹² [REDACTED]

⁵ See, e.g., Decl. of Douglas Denney on Behalf of Integra, ¶ 6; Decl. of Greg Darnell on Behalf of Cbeyond, ¶ 6; Joint Comments of Cbeyond, Integra, and TWT, at 20; Comments of Cox Communications, Inc. at 17 n.24.

⁶ Comments of Charter Comms., Inc., at 9.

⁷ Decl. of Gerard Laurain, ¶ 2 (attached hereto as Exhibit A).

⁸ Decl. of Gerard Laurain, ¶ 3.

⁹ Decl. of Gerard Laurain, ¶ 4.

¹⁰ Decl. of Gerard Laurain, ¶ 5.

¹¹ Decl. of Gerard Laurain, ¶ 5.

¹² Decl. of Surendra Saboo, ¶¶ 4, 12, 18, 30, 36, 41 (attached hereto as Exhibit B).

[REDACTED]

Neutral Tandem is ready, willing, and able to provide all of these carriers with a competitive alternative to the local tandem transit service provided by ILECs – at rates below those charged by the ILECs – in every market where those carriers provide service.¹⁴ The claim that these carriers lack competitive choice for local tandem transit service is unsupportable.

A number of the carriers seeking regulation of ILEC transit service rates also have claimed that “Neutral Tandem’s network does not reach all of the networks (such as rural incumbent LEC networks) to which” the carriers need to route traffic.¹⁵ This is a red herring. Neutral Tandem provides local transit service to more than 100 of the largest national and regional telecommunications carriers throughout the country.¹⁶ [REDACTED]

[REDACTED]

[REDACTED]

Although there undoubtedly are some small, rural carriers to which Neutral Tandem is not connected, with the exception of Charter, Neutral Tandem can deliver local tandem transit traffic to every major telecommunications carrier in the country.¹⁸ Given the ubiquitous nature of Neutral Tandem’s nationwide termination footprint, the amount of local transit traffic carriers actually are required to send through an ILEC, as opposed to through Neutral Tandem or another competitive transit provider, likely is very small.¹⁹

¹³ Decl. of Surendra Saboo, ¶¶ 13, 19, 36, 41.

¹⁴ Decl. of Surendra Saboo, ¶¶ 12, 18, 30, 36, 41.

¹⁵ See Comments of Cbeyond, Integra, and TWT, at 21.

¹⁶ Decl. of Surendra Saboo, ¶ 7.

¹⁷ Decl. of Surendra Saboo, ¶¶ 16, 24, 39, 44.

¹⁸ Decl. of Surendra Saboo, ¶ 14.

¹⁹ Decl. of Surendra Saboo, ¶¶ 15, 23.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

To be clear, there is nothing wrong with carriers exercising their options in the marketplace. That is the hallmark of a competitive market. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The clear aim of these carriers' requests for regulation is not to lower the ILECs' transit rates so that those carriers can actually make greater use of the ILECs' transit services. Rather, the aim is to use the regulatory process to force ILECs to offer below-market rates as a benchmark, so that these carriers can then attempt to force competitive local transit providers such as Neutral Tandem to match those below-market rates. The Commission has made clear that any new rules related to transit service should be adopted only if they "advance the goals of

²⁰ Decl. of Surendra Saboo, ¶¶ 20, 38, 45.

²¹ Decl. of Surendra Saboo, ¶ 32.

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the Act.”²² Mandating below-market rates for competitive services does not advance the goals of the Act and is not an appropriate use of this Commission’s regulatory authority.²³

II. IF THE COMMISSION FINDS IT NECESSARY TO ADDRESSES ANY OF THE LEGAL ISSUES SURROUNDING LOCAL TANDEM TRANSIT SERVICE, IT SHOULD REAFFIRM THAT LOCAL TRANSIT SERVICE IS NOT “INTERCONNECTION” UNDER SECTION 251(C)(2) OF THE 1996 ACT.

The *NPRM* defines local tandem transit service as the exchange of non-access traffic between an originating and terminating carrier, by routing that traffic through the network of the transit carrier; *i.e.*, the intermediate carrier between the originating and terminating carriers.²⁴ Thus, local tandem transit service plainly involves, at a minimum, the “transport” of traffic between and among the carriers’ networks.

The Commission, however, has held that “the term ‘interconnection’ under Section 251(c)(2) refers only to the physical linking of two networks[.]”²⁵ The Commission’s rules thus make clear that “interconnection” under Section 251(c)(2) “does not include the transport and termination of traffic.”²⁶

Multiple federal courts also have held that “interconnection” under Section 251(c)(2) of the 1996 Act does not involve the actual exchange or delivery of telecommunications traffic. As

²² *NPRM* ¶ 683.

²³ Cox points out that there is “good reason to maintain the ability to obtain indirect interconnection via transit service, including ensuring redundancy in the case of network outages or natural disasters.” (Comments of Cox Comms., at 17.) Neutral Tandem agrees that ensuring redundancy in the PSTN is a laudable goal. As Neutral Tandem pointed out in its opening comments, the New York Public Service Commission has correctly found that the way to promote network and redundancy is through promotion of alternatives to ILEC tandem services. Price regulation of ILEC tandem services that will discourage investment in alternative, redundant networks, will have the exact opposite effect – discouraging development of redundant networks.

²⁴ *NPRM* ¶ 683.

²⁵ *Local Competition Order*, 11 F.C.C.R. 15499, 1996 WL 452885, ¶ 176 (Aug. 8, 1996) (subsequent history omitted) (emphasis added).

²⁶ 47 C.F.R. § 51.5.

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the D.C. Circuit put it, “to ‘interconnect’ and to exchange traffic have distinct meanings . . . [interconnection] refers only to ‘facilities and equipment,’ not to the provision of any service.”²⁷ Similarly, the Eighth Circuit has held that “this reference [to interconnection in Section 251(c)(2)] is to a physical link, between the equipment of the carrier seeking interconnection and the LEC’s network.”²⁸ Other circuit courts have reached the same conclusion.²⁹ •

Simply put, “interconnection” under Section 251(c)(2) is limited to the physical linking of networks, and does not involve the transport and delivery of telecommunications traffic between those networks. Local tandem transit service involves the transport and delivery of telecommunications traffic between networks. Thus, local tandem transit service is not “interconnection” under Section 251(c)(2) of the 1996 Act.

In light of the Commission’s rules and clear circuit court precedent, it is not surprising that, when the Commission has had the occasion to address whether ILECs have a duty to provide local tandem transit service under the 1996 Act in the past, it consistently has found that no such duty exists. For example, the Wireline Competition Bureau, arbitrating an interconnection agreement in place of a state regulator, found that an ILEC had “no duty to provide transit service at TELRIC rates” in order to comply with Section 251(c)(2) of the 1996

²⁷ *AT&T Corp. v. FCC*, 317 F.3d 227, 234 (D.C. Cir. 2003); *see also MCIMetro Access Transmission Servs., Inc. v. BellSouth Telecomms., Inc.*, 352 F.3d 872, 879 (4th Cir. 2003) (concluding that interconnection is limited to the physical linking of two networks and does not include the transport and termination of traffic).

²⁸ *Competitive Telecomms. Ass’n v. FCC*, 117 F.3d 1068, 1071-72 (8th Cir. 1997); *Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm’n*, 530 F.3d 676, 684 (8th Cir. 2008).

²⁹ *See, e.g., MCIMetro Access Transmission Servs., Inc. v. BellSouth Telecomms., Inc.*, 352 F.3d 872, 879 (4th Cir. 2003) (concluding that interconnection is limited to the physical linking of two networks and does not include the transport and termination of traffic).

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Act.³⁰ The Commission also has found, in reviewing applications by RBOCs to provide long distance service for compliance with Section 251(c)(2), that “no clear Commission precedent or rules” required the RBOC to provide local transit service at TELRIC rates.³¹

In light of this authority, at least one federal district court found that the Commission “has held that TELRIC pricing is not required for transit service rates.”³² The court thus held that, “as a legal matter,” a state commission “was correct in holding that it was not required to apply TELRIC rates” for transit service.³³

District courts in Nebraska and Connecticut, however, erroneously have found that local tandem transit service is “interconnection” under Section 251(c)(2) of the 1996 Act.³⁴ Both of these courts relied extensively on the Commission’s discussion of local transit service in the 2005 FNPRM.³⁵ In the 2005 FNPRM, the Commission observed that the “record suggests that the availability of transit service is increasingly critical to establishing indirect interconnection – a form of interconnection expressly recognized and supported by the Act.”³⁶ The Commission further noted that carriers “often rely upon transit service from the incumbent LECs to facilitate indirect interconnection with each other.”³⁷ The Commission expressed concern that “[w]ithout

³⁰ *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5)*, 17 FCC Rcd. 27039, ¶ 117 (Wireline Comp. Bureau 2002).

³¹ *Application of BellSouth Corp.*, 17 FCC Rcd. 7325, n.305 (2003).

³² *WorldNet Telecomms., Inc. v. Telecommunications Reg. Bd. of Puerto Rico*, 707 F.Supp.2d 163, 198 (D.P.R. 2009).

³³ *Id.*

³⁴ *Qwest v. Cox Nebraska Telecom, LLC*, 2008 U.S. Dist. LEXIS 102032 (D. Neb. Dec. 17, 2008); *Southern New England Tel. Co. v. Perlermino*, 2011 WL 1750224 (D. Conn. May 6, 2011).

³⁵ *Qwest*, 2008 U.S. Dist. LEXIS 102032, at *3; *Southern New England Tel. Co.*, 2011 WL 1750224, at **3-4.

³⁶ 2005 FNPRM, ¶ 125.

³⁷ 2005 FNPRM, ¶ 125.

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the continued availability of transit service, carriers that are indirectly interconnected may have no efficient means by which to route traffic between their respective networks.”³⁸

Based on the 2005 *FNPRM*, the Nebraska court expressed concern that, unless ILECs were required to provide transit service at TELRIC-based rates, the ILECs could “frustrate the flow of traffic and prevent carriers from indirectly interconnecting.”³⁹ Likewise, the Connecticut court seized on the Commission’s statements from 2005 to conclude that “[i]nsofar as section 251(c) requires an ILEC to provide equipment to enable carriers to connect, that duty includes indirect connection.”⁴⁰

The observations from the 2005 *FNPRM* on which the Nebraska and Connecticut courts relied are more than six years old. Neutral Tandem had barely commenced operations in a few markets at that time. It may have been entirely understandable, more than six years ago, to be concerned about the possibility that ILEC transit service could become a chokepoint to the indirect exchange of traffic. In May 2011, however, no such concern meaningfully exists. As shown above, carriers have competitive alternatives – often many competitive alternatives – to the ILECs’ local tandem transit service. Moreover, as carriers transition to exchanging traffic more predominantly on an IP basis, which allows for more efficient and cost-effective traffic exchange, barriers to the exchange of traffic via direct connection between originating and terminating carriers will continue to fall.⁴¹

³⁸ 2005 *FNPRM*, ¶ 125.

³⁹ *Qwest*, 2008 U.S. Dist. LEXIS 102032, at *4.

⁴⁰ *Southern New England Tel. Co.*, 2011 WL 1750224, at *5.

⁴¹ See *NPRM*, ¶ 506.

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The Nebraska and Connecticut courts also believed that their decisions were justified by a perceived need to interpret the 1996 Act in a manner that promotes competition.⁴² However laudable that goal, there can be little doubt that regulating the price of ILEC transit service down to TELRIC rates would be *detrimental* to the ongoing development of facilities-based competition. As Neutral Tandem has pointed out, Congress intended TELRIC-based pricing to apply only to “bottleneck” parts of the ILECs’ networks, for which competing carriers can find no substitute.⁴³ One of the “goal[s] of limiting the requirement of unbundled access at cost to [the] network services that requesting carriers need rather than just want is to wean those carriers from reliance on unbundled network elements, so that fully competitive landline networks will be built[.]”⁴⁴

As courts have recognized, requiring ILECs to provide network services to competitors at “cost-based” rates can “retard investment, handicap competition detrimentally, and discourage alternative means of achieving the same result that could conceivably enhance competition in the long run.”⁴⁵ The same concerns counsel strongly against imposing TELRIC regulation on the ILECs’ local tandem transit services, where facilities-based competition already has been shown to be feasible.⁴⁶

As the record shows, between the development of competition and advances in technology over the past 6+ years, there is no pressing need for the Commission to wade into the

⁴² *Qwest*, 2008 U.S. Dist. LEXIS 102032, at *5; *Southern New England Tel. Co.*, 2011 WL 1750224, at *4.

⁴³ *See, e.g., Illinois Bell Tel. Co. v. Box*, 548 F.3d 607, 611-12 (7th Cir. 2008).

⁴⁴ *Id.* at 610 (internal quotation marks omitted).

⁴⁵ *Verizon New England, Inc. v. Maine Pub. Util. Comm’n*, 509 F.3d 1, 9 (1st Cir. 2007); *see also United States Telecom Ass’n v. FCC*, 359 F.3d 554, 573, 580 (D.C. Cir. 2004).

⁴⁶ Even back in 2005, the Commission recognized the possibility that “mandated transiting or regulated rates for such service might discourage the development of this market.” 2005 FNPRM, ¶ 129.

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legal issues surrounding local tandem transit service. If the Commission finds it necessary to do so, however, it should reaffirm that, to the extent ILECs have any duty to provide local tandem transit service, such a duty would arise only under Section 251(a) of the 1996 Act, which does not require TELRIC-based pricing.⁴⁷ Although there is no evidence that competitive carriers are actually being forced to pay unreasonably high rates for the delivery of their local transit traffic, such an approach could provide a basis to ensure that, in any limited areas where carriers do not have competitive options, ILECs would continue to provide transit service at “just and reasonable” rates.⁴⁸

Respectfully submitted,
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⁴⁷ 2005 FNPRM, ¶ 132; *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5)*, 17 FCC Rcd. 27039, ¶ 117 (Wireline Comp. Bureau 2002).

⁴⁸ See Comments of Level 3 Comms. LLC, at 18-21 (advocating adoption of “just and reasonable” pricing standard for transit).

Exhibit A

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DECLARATION OF GERARD LAURAIN

1. I am Senior Director of Marketing for Neutral Tandem, Inc. ("Neutral Tandem").

In that capacity, I am responsible for Neutral Tandem's marketing efforts with respect to local transit service. I also am familiar with the markets in which Neutral Tandem provides local transit service. The purpose of this Declaration is to provide detail concerning the markets in which Neutral Tandem provides local transit service.¹

2. As of March 31, 2011, Neutral Tandem provides local transit service in 189 of the 192 LATAs in the continental United States and Puerto Rico. Neutral Tandem provides local transit service to more than 100 of the largest national and regional telecommunications carriers

¹ For purposes of this Declaration, when I use the phrase "local transit service," I mean a service provided by Neutral Tandem and other intermediate carriers that allows originating and terminating carriers to exchange non-access traffic through the network of the intermediate carrier, as opposed to exchanging that traffic through direct interconnection between the originating and terminating carrier.

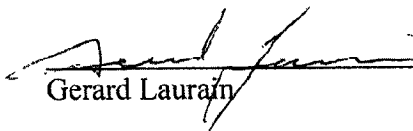
throughout the country. Neutral Tandem has the ability to reach more than 538,000,000 telephone number end points. A map of the markets served by Neutral Tandem as of March 31, 2011 is attached hereto as Exhibit 1.

3. The only LATAs in the continental United States in which Neutral does not provide local transit service are LATAs 921, 980, and 981.

4. LATA 921 is comprised entirely of Fishers Island, New York. According to Wikipedia, Fishers Island, New York is located approximately 11 miles off of the end of Long Island Sound, is approximately 9 miles long and 1 mile wide, and has approximately 250 full-time residents. A map of the Northeast Region LATAs downloaded from maponics.com, which shows LATA 921, is attached hereto as Exhibit 2. For reference, LATA 921 is circled by hand.

5. LATAs 980 and 981 are comprised of part of the Navajo Nation. According to Wikipedia, fewer than 175,000 persons resided on the entire Navajo Nation, which includes substantial areas in New Mexico that are not part of LATAs 980 and 981, as of 2000. A map of the Southwest Region LATAs downloaded from maponics.com, which shows LATAs 980 and 981, is attached hereto as Exhibit 3. A map of the Navajo Nation downloaded from Wikipedia, which shows that substantial parts of the Navajo Nation are not within LATAs 980 and 981, is attached hereto as Exhibit 4.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, and belief.


Gerard Laurain

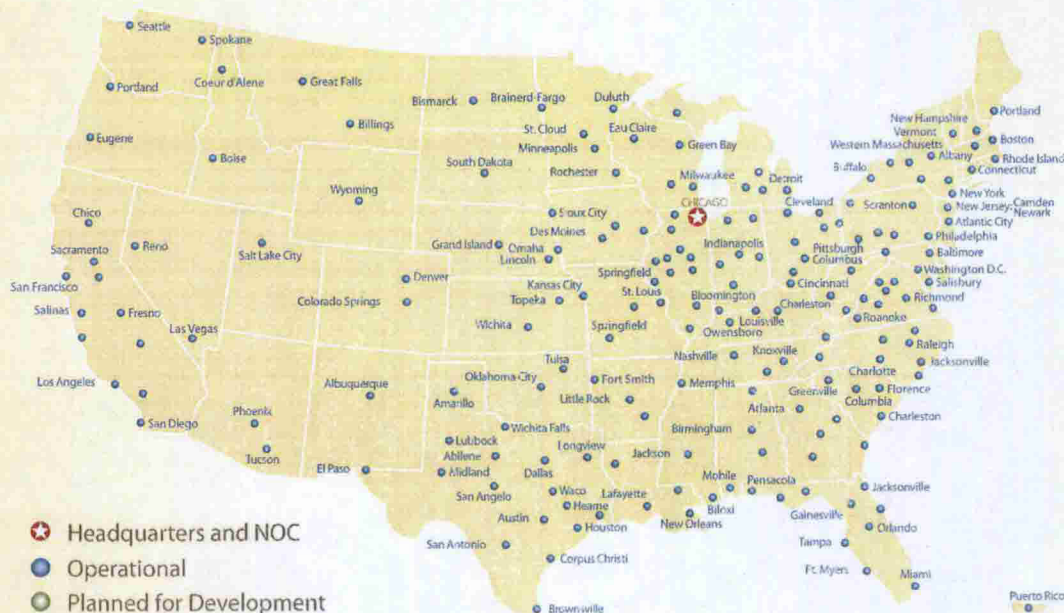
Date: 05-17-11

EXHIBIT 1

make every minute count.



Neutral Tandem Markets



- ★ Headquarters and NOC
- Operational
- Planned for Development

The above map is current as of 3-31-11. Neutral Tandem reserves the right to change the service areas identified as 'planned for development' without notice, and is under no obligation to update this map with respect to any such changes.

Neutral Tandem, Inc. is the nation's leading provider of independent tandem services to wireless, wireline, cable and broadband service providers. Founded in 2003, the company has created the largest non-PSTN (Public Switched Telephone Network) tandem network in the U.S., facilitating inter-carrier communications with a cost-effective alternative to the Incumbent Local Exchange Carrier network. Competitive carriers have made Neutral Tandem the premier company of our kind, and the undisputed market leader. In fact, Neutral Tandem offers more interconnections—with over 538 million telephone number end points—to more carriers, in more locations than any other alternate tandem provider network. Maybe that's why Neutral Tandem is trusted by over 100 national and regional competitive carriers in the 189 markets we serve.

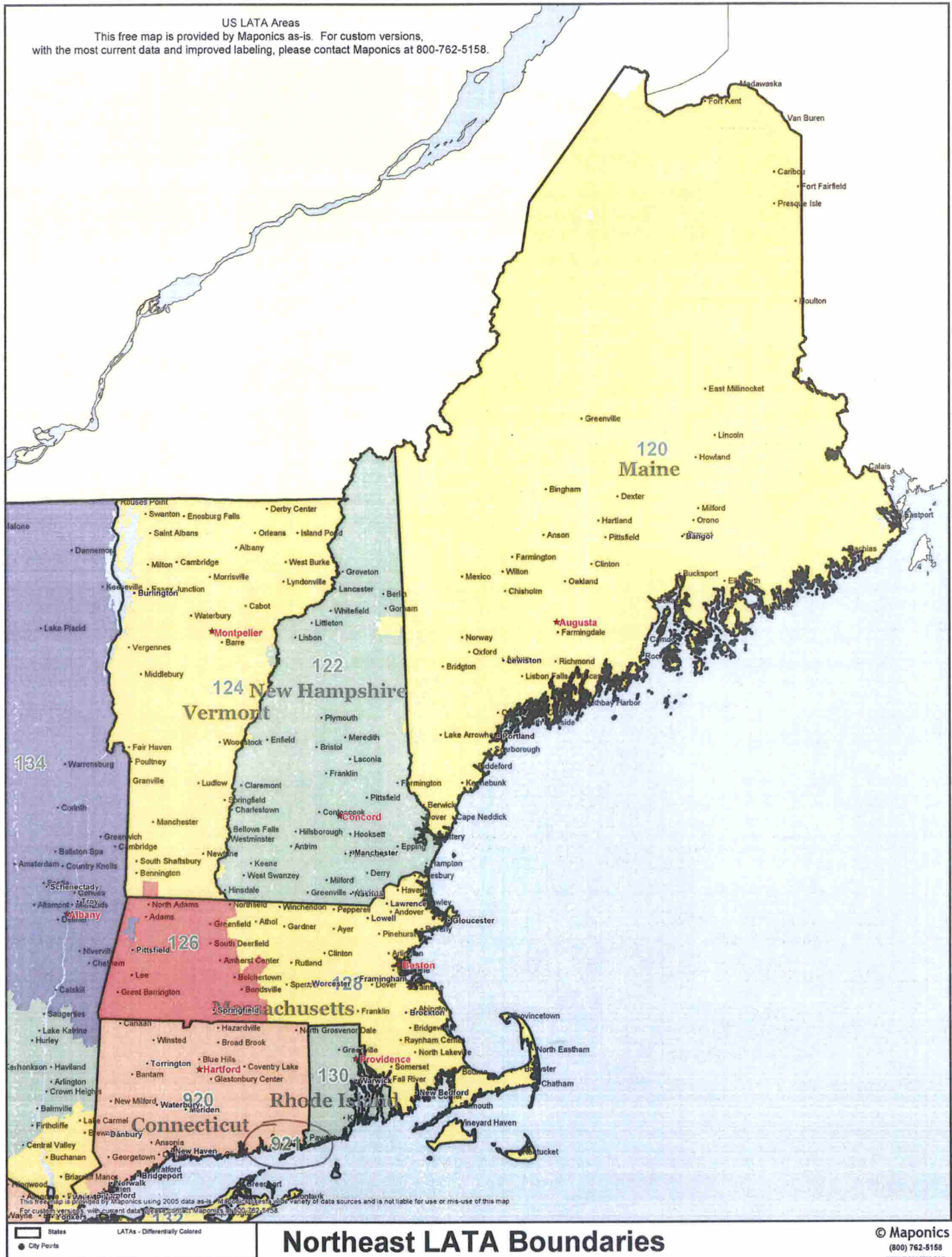
CORPORATE HEADQUARTERS:

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EXHIBIT 2

US LATA Areas

This free map is provided by Maponics as-is. For custom versions, with the most current data and improved labeling, please contact Maponics at 800-762-5158.



Northeast LATA Boundaries

EXHIBIT 3

EXHIBIT 4

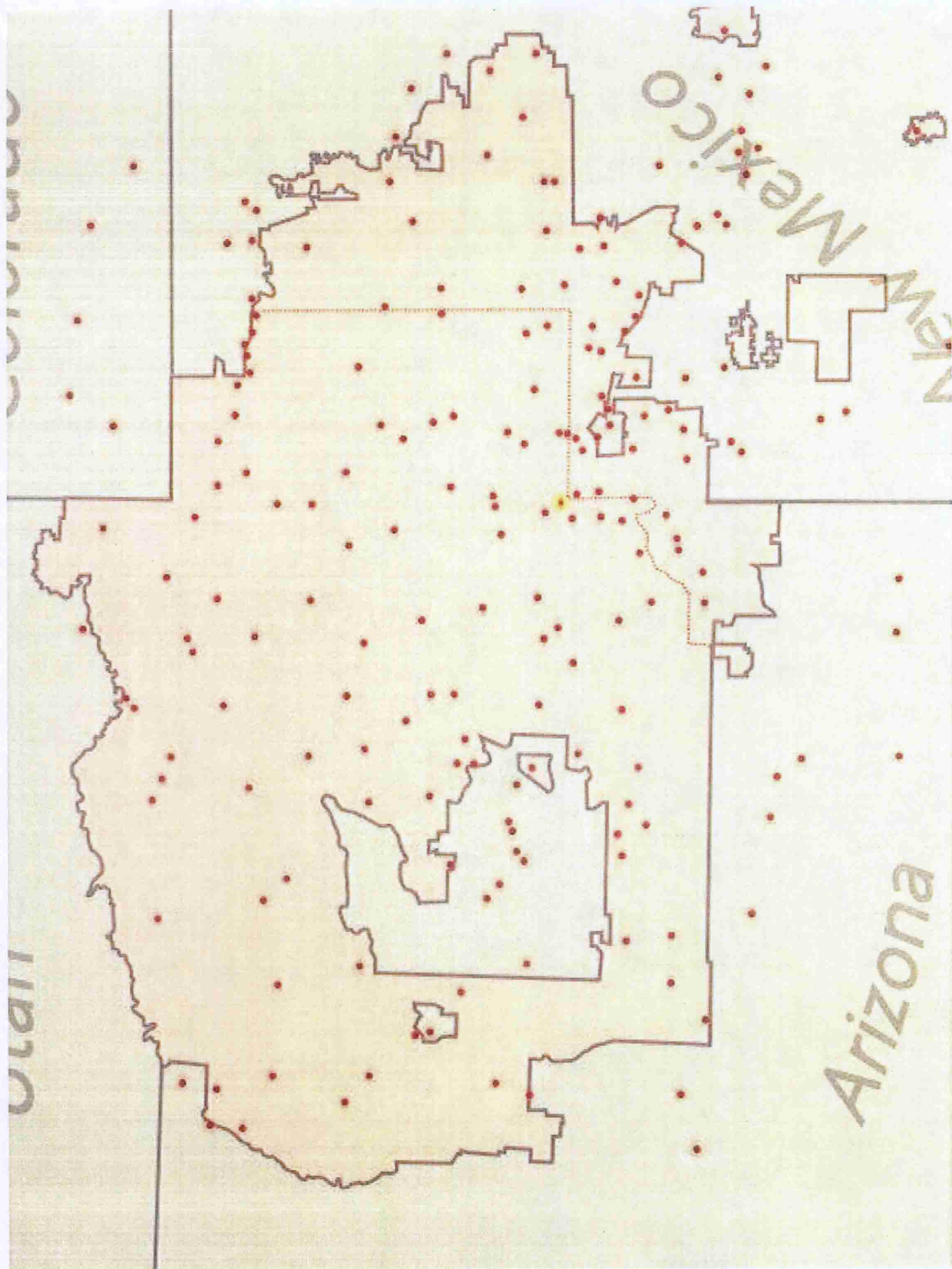


Exhibit B

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Lifeline and Link-Up)	WC Docket No. 03-109

DECLARATION OF SURENDRA SABOO

1. I am the President and Chief Operating Officer of Neutral Tandem, Inc. (“Neutral Tandem”). In that capacity, I am responsible for all of Neutral Tandem’s operations throughout the United States. Neutral Tandem’s sales organization in the United States reports to me. I am familiar with the markets in the United States in which Neutral Tandem provides local transit service, as well as the competitive landscape surrounding local transit service generally.¹

2. I have been provided with and reviewed comments filed by Charter Communications, Inc. (“Charter”), Cbeyond Communications Company, LLC (“Cbeyond”), Integra Telecom, Inc. (“Integra”), TW Telecom Inc. (“TWT”), MetroPCS Communications, Inc.

¹ For purposes of this Declaration, when I use the phrase “local transit service,” I mean a service provided by Neutral Tandem and other intermediate carriers that allows originating and terminating carriers to exchange non-access traffic through the network of the intermediate carrier, as opposed to exchanging that traffic through direct interconnection between the originating and terminating carrier.

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(“MetroPCS”), and Cox Communications, Inc. (“Cox”). I also have been provided with and reviewed Declarations submitted in this proceeding by Greg Darnell on behalf of Cbeyond, and by Douglas K. Denney on behalf of Integra.

3. The purpose of this Declaration is to provide further detail concerning the markets in which Neutral Tandem provides local transit service, as well as the competitive landscape Neutral Tandem faces in providing local transit service.

4. This Declaration also will respond to assertions made by Mr. Darnell and Mr. Denney concerning markets in which they assert that Neutral Tandem does not provide local transit service, and costs Mr. Darnell claims that Cbeyond incurs in connection with using Neutral Tandem’s local transit service. As described below, with due respect to Mr. Darnell and Mr. Denney, a number of the assertions each has made are inaccurate.

5. Finally, this Declaration will describe the local transit services that Neutral Tandem [REDACTED]. This Declaration also will describe efforts that individuals in Neutral Tandem’s sales organization, all of whom report to me, [REDACTED] [REDACTED]. As described below, a number of these carriers have informed Neutral Tandem that [REDACTED] [REDACTED] [REDACTED].

I. MARKETS WHERE NEUTRAL TANDEM PROVIDES LOCAL TRANSIT SERVICE, AND COMPETITIVE PRESSURES NEUTRAL TANDEM FACES.

6. As described in more detail in the Declaration of Gerard Laurain, as of March 31, 2011, Neutral Tandem provides local transit service in 189 of the 192 LATAs in the continental United States and Puerto Rico.

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7. As also described in more detail in Mr. Laurain's Declaration, Neutral Tandem provides local transit service to more than 100 of the largest national and regional telecommunications carriers throughout the country. Neutral Tandem has the ability to reach more than 538,000,000 telephone number end points.

8. Although Neutral Tandem was the first carrier to begin providing local transit service on a nationwide basis, Neutral Tandem faces considerable competitive pressures in the local transit market. I am aware of several carriers that compete with Neutral Tandem to provide local transit service. These carriers include Incumbent Local Exchange Carriers ("ILECs"), as well as non-ILEC providers such as Peerless Network, Hypercube, and Level 3.

9. In many instances, one or more of Neutral Tandem's customers have informed us that they have received competitive offers for local transit service from non-ILEC competing local transit providers. In many instances, these competitive pressures have forced Neutral Tandem to lower its prices for local transit service. In other instances, Neutral Tandem has lost local transit traffic to one or more of these other competing local transit providers, even after lowering its prices.

II. RESPONSE TO THE DECLARATIONS OF DOUGLAS DENNEY OF INTEGRA AND GREG DARNELL OF CBeyond CONCERNING NEUTRAL TANDEM'S LOCAL TRANSIT SERVICES [REDACTED].

A. Response to Declaration of Douglas Denney on Behalf of Integra

10. I have reviewed the Declaration submitted by Douglas Denney on behalf of Integra. In that Declaration, Mr. Denney asserts that Qwest charges Integra \$0.0045 per minute for local transit service. (Denney Decl. ¶ 5.) Mr. Denney acknowledges that Neutral Tandem provides local transit service in a number of Integra's markets, but he claims that "Neutral

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Tandem does not offer service in Integra’s small markets, such as Idaho, North Dakota, Nevada, and Montana.” (*Id.* ¶ 6.)

11. Mr. Denney’s assertion that Neutral Tandem does not provide service in Idaho, North Dakota, Nevada, and Montana is wrong. As shown in Attachment 1 to Mr. Laurain’s Declaration, Neutral Tandem provides local transit service in each and every one of those states.

12. On a more granular level, my understanding is that Integra provides service in the following markets: Boise (planned), Brainard-Fargo, Colorado Springs, Denver, Eugene, Minneapolis, Phoenix, Portland, Rochester, St. Cloud, Sacramento, Santa Clara, Santa Rosa, Reno, Salt Lake City, Seattle, Spokane, Yakima, and Tucson. Neutral Tandem offers local transit service in each and every one of those markets.

13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] I also can say that Neutral Tandem is ready, willing, and able to provide local transit service to Integra, at rates considerably beneath those charged by Qwest, in each and every market Integra serves.

14. Finally, Mr. Denney asserts that “Neutral Tandem’s network does not reach all of the networks (such as rural incumbent LEC networks) to which Integra needs to route traffic.” (Denney Decl. ¶ 6.) As noted above, Neutral Tandem provides service to more than 100 of the largest national and regional carriers in the United States. Although there undoubtedly are some small carriers to which Neutral Tandem is not currently connected, with one exception (Charter,

discussed in more detail below), Neutral Tandem is connected to every sizeable telecommunications carrier in the country.

15. I note that Mr. Denney does not attempt to quantify the amount of local transit traffic that Integra either is required to send through Qwest as opposed to Neutral Tandem. Given my knowledge of Neutral Tandem's termination footprint, however, I believe there is very likely only a small percentage of Integra's local transit traffic that Neutral Tandem could not deliver for Integra.

16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. Response to Declaration of Greg Darnell on Behalf of Cbeyond

17. I have reviewed the Declaration submitted by Greg Darnell on behalf of Cbeyond. In that Declaration, Mr. Darnell asserts that AT&T offers Cbeyond a rate of \$0.0025 per minute for local transit service. (Darnell Decl. ¶ 5.) Mr. Darnell acknowledges that Neutral Tandem provides local transit service in "certain" of Cbeyond's markets. (*Id.* ¶ 6.) Mr. Darnell does not mention the existence of any other non-ILEC provider of local transit service in any of Cbeyond's markets. (*Id.*)

18. According to Mr. Darnell's Declaration, Cbeyond provides service in: Atlanta, Boston, Chicago, Dallas/Fort Worth, Denver, Detroit, Houston, Los Angeles, Miami, Minneapolis/St. Paul, the San Francisco Bay area, Seattle, and the greater Washington, D.C.

area. (*Id.* ¶ 2.) Neutral Tandem offers local transit service in each and every one of those markets.

19. [REDACTED]

[REDACTED] I also can say that Neutral Tandem is ready, willing, and able to provide local transit service to Cbeyond, at rates considerably beneath those charged by the ILEC, in each and every market Cbeyond serves.

20. [REDACTED]

21. Mr. Darnell also asserts that “Neutral Tandem’s service does not reach all of the networks (e.g., rural incumbent LEC networks) that subtend the RBOC’s local tandem switch to which Cbeyond needs to route traffic. As such, Cbeyond must still use the RBOC’s local tandem switch in every market.” (Darnell Decl. ¶ 6.)

22. As noted above, Neutral Tandem provides service to more than 100 of the largest national and regional carriers in the United States. Although there undoubtedly are some very small carriers to which Neutral Tandem is not currently connected, with one exception (Charter,

discussed in more detail below), Neutral Tandem is connected to every sizeable telecommunications carrier in the country.

23. I note that Mr. Darnell does not attempt to quantify the amount of local transit traffic that Cbeyond is required to send through an RBOC as opposed to Neutral Tandem. Given my knowledge of Neutral Tandem's termination footprint, however, I believe there is very likely only a small percentage of Cbeyond's local transit traffic that Neutral Tandem could not deliver for Cbeyond.

24. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25. Finally, Mr. Darnell asserts that "in order to make use of Neutral Tandem's limited tandem transit service, Cbeyond must incur the additional expense of disaggregating traffic and building additional facilities to reach Neutral Tandem's network." (*Id.*)

26. With due respect, that statement is not accurate. As part of the enhanced value proposition Neutral Tandem provides to its customers, Neutral Tandem covers the cost of building facilities to its customers' network. [REDACTED]

[REDACTED]

III. LOCAL TRANSIT SERVICES NEUTRAL TANDEM [REDACTED]

27. In Section II above, I provided information concerning the local transit services Neutral Tandem provides to Cbeyond and Integra. In this Section, I provide additional detail concerning [REDACTED]

[REDACTED]

A. Charter

28. In its comments, Charter argues that “no credible evidence exists that the market for transit services are [sic] competitive.” (Comments of Charter Comms., Inc., at 9.) Charter further argues that “the available evidence also suggests that Neutral Tandem’s service is not ubiquitous across the country and is not available in many Tier 2 and Tier 3 markets.” (*Id.*) Charter then asserts that “Charter and other competitive providers in these smaller markets generally are not able to choose between competing transit service providers, and are often required to use the only transit service provider in that market: those provided by the ILEC.” (*Id.*) According to Charter, “[e]ven in those major markets where one or more competitive tandem providers exists, the suburban and rural areas surrounding those major markets may not be served by the competitive transit provider. The ILEC transit service would then be the only available transit service in those service areas that are not covered by a competitive tandem provider.” (*Id.*)

29. As shown above and in the Declaration of Gerard Laurain, Charter’s comments simply do not comport with the facts. Neutral Tandem provides local transit service in 189 of the 192 LATAs in the United States. As shown in Mr. Laurain’s Declaration, the only LATAs

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where Neutral Tandem does not provide service are a LATA located on a small island off of New York with 250 residents, and certain parts of the Navajo Nation. Charter's assertion that "Neutral Tandem's service is not ubiquitous across the country and is not available in many Tier 2 and Tier 3 markets" is contrary to the facts.

30. Charter's assertion that "Charter and other competitive providers in these smaller markets generally are not able to choose between competing transit service providers, and are often required to use the only transit service provider in that market: those provided by the ILEC" is equally lacking in factual basis. I have reviewed a copy of Charter's market list acquired on May 16, 2011 from its website, www.charter.com. Based on the locations listed on that web site, I am not aware of any market in the country where Charter provides service that Neutral Tandem does not serve.

31. [REDACTED]

32. [REDACTED]

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33. Charter's professed concern that Neutral Tandem and other competitive transit providers may not be connected to all other carriers is equally troubling, because Charter (unique among almost all other major providers) has refused even to interconnect with Neutral Tandem to allow Neutral Tandem's other local transit customers to deliver traffic bound for Charter's end-users using Neutral Tandem's services. Charter is the only major telecommunications carrier in the continental United States to which Neutral Tandem is not even able to deliver its other customers' local transit traffic.

34. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. TW Telecom ("TWT")

35. TWT has joined comments with Cbeyond and Integra arguing that "the market for tandem transit service is *not* effectively competitive" and that "in most areas, the incumbent LEC has a monopoly over transit service and is able to charge above-cost rates." (Joint Comments of Cbeyond, Integra, and TWT, at 20.) As with the assertions in the Declarations submitted by Cbeyond and Integra, these statements are simply not true.

36. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I also can say that Neutral Tandem

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is ready, willing, and able to provide local transit service to TWT, at rates considerably beneath those charged by the ILEC, in each and every market TWT serves.

37. I have reviewed a copy of TWT's network map, taken from its web site on May 16, 2011. Based on the markets shown on that map, [REDACTED]

[REDACTED]

[REDACTED].

38. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

39. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C. Cox

40. Cox has filed comments asserting that the ILEC is "the only entity that offers complete, reliable and ubiquitous indirect interconnection." (Comments of Cox Communications, Inc. at 17.) Cox also has asserted that "even if there were alternatives, and even when a provider has direct interconnection, there are good reasons to maintain the ability to obtain indirect interconnection via transit service, including ensuring redundancy in the case of network outages or natural disasters." (*Id.*) Cox acknowledges that Neutral Tandem and other

non-ILEC companies offer local transit service “in some areas,” but it asserts that “many providers do not choose to connect with non-ILEC tandem services, so those companies do not provide a complete solution.” (*Id.*, n.24.)

41. [REDACTED]

[REDACTED]

[REDACTED] I also can say that Neutral Tandem is ready, willing, and able to provide local transit service to Cox, at rates considerably beneath those charged by the ILEC, in each and every market Cox serves.

42. [REDACTED]

[REDACTED]

C. MetroPCS

43. [REDACTED]

[REDACTED]

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44. Neutral Tandem is ready, willing, and able to provide local transit service to MetroPCS, at rates considerably beneath those charged by the ILEC, in each and every market MetroPCS serves. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

45. [REDACTED]

[REDACTED]

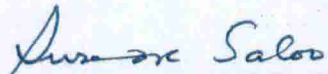
[REDACTED]

[REDACTED]

[REDACTED]

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I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, and belief.



Surendra Saboo

Date: 05/21/2011